

## Brigham Young University Law School BYU Law Digital Commons

---

### Utah Supreme Court Briefs (1965 –)

---

1978

# Burt Drilling, Inc. et al v. Portadrill et al : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Bayle and Lauchnor; Attorneys for Respondent;

Howard, Lewis & Petersen; Attorneys for Appellants;

---

### Recommended Citation

Brief of Respondent, *Burt Drilling Inc. v. Portadrill*, No. 15709 (Utah Supreme Court, 1978).

[https://digitalcommons.law.byu.edu/uofu\\_sc2/1181](https://digitalcommons.law.byu.edu/uofu_sc2/1181)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

BURT DRILLING, INC., a :  
Utah corporation, and :  
INTERMOUNTAIN POWER PROJECT, :  
a Utah corporation, :

Plaintiffs and :  
Appellants, :

vs. :

Case No. 15709

PORTADRILL, a Division of :  
SMITH INTERNATIONAL, INC., :  
and PACIFIC HYDRO :  
CORPORATION, :

Defendants and :  
Respondents. :

---

BRIEF OF RESPONDENT  
PACIFIC HYDRO CORPORATION

---

BAYLE AND LAUCHNOR  
F. Robert Bayle, Esq.  
1105 Continental Bank Building  
Salt Lake City, Utah 84101

Attorneys for Respondent,  
Pacific Hydro Corporation

HOWARD, LEWIS & PETERSEN  
Don R. Petersen, Esq.  
120 East 300 North Street  
Provo, Utah 84601

Attorneys for Appellants

FILED

JUL - 3 1978

N. 15709 A+R brief  
Christensen (LR)

1119 SEP 12 1 SUPREME COURT

E STATE OF UTAH

ECT, :

Case No. 15709

of  
IC., :

d :

BRIEF OF RESPONDENT  
CIFIC HYDRO CORPORATION

BAYLE AND LAUCHNOR  
F. Robert Bayle, Esq.  
1105 Continental Bank Building  
Salt Lake City, Utah 84101

Attorneys for Respondent,  
Pacific Hydro Corporation

HOWARD, LEWIS & PETERSEN  
Don R. Petersen, Esq.  
120 East 300 North Street  
Provo, Utah 84601

Attorneys for Appellants

---

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

BURT DRILLING, INC., a :  
Utah corporation, and :  
INTERMOUNTAIN POWER PROJECT, :  
a Utah corporation, :

Plaintiffs and :  
Appellants, :

vs. :

Case No. 15709

PORTADRILL, a Division of :  
SMITH INTERNATIONAL, INC., :  
and PACIFIC HYDRO :  
CORPORATION, :

Defendants and :  
Respondents. :

---

BRIEF OF RESPONDENT  
PACIFIC HYDRO CORPORATION

---

BAYLE AND LAUCHNOR  
F. Robert Bayle, Esq.  
1105 Continental Bank Building  
Salt Lake City, Utah 84101

Attorneys for Respondent,  
Pacific Hydro Corporation

HOWARD, LEWIS & PETERSEN  
Don R. Petersen, Esq.  
120 East 300 North Street  
Provo, Utah 84601

Attorneys for Appellants

## TABLE OF CONTENTS

	Page
STATEMENT OF CASE .....	1
DISPOSITION IN LOWER COURT .....	2
RELIEF SOUGHT ON APPEAL .....	2
STATEMENT OF FACTS .....	2
ARGUMENT	
POINT I    THE TRIAL COURT PROPERLY RULED THAT PACIFIC HYDRO DID NOT HAVE SUFFICIENT CONTACTS WITH THIS STATE FOR JURISDICTION TO BE MAINTAINED OVER IT .....	4
POINT II    PACIFIC HYDRO WAS NOT "TRANSACTING BUSINESS" IN UTAH AS DEFINED BY STATUTORY AND CASE LAW	15
CONCLUSION .....	19

## CASES CITED

	Page
Abbott G.M. Diesel, Inc. vs. Piper Aircraft Corp., 578 P.2d 850 (Utah 1978) .....	5,6,7,8, 12,15,19
Hanson vs. Denckla, 357 U.S. 235 (1958).....	6
Hill vs. Zale, 25 Utah 2d 357, 402 P.2d 332 (1971).	15, 16, 17, 18
Intermountain Bus. Forms, Inc. vs. Shepard Bus. F. Co., 96 Idaho 538, 531 P.2d 1183 (1975) .....	13
International Shoe Co. vs. Washington, 326 U.S. 310 (1945) .....	5,6,14
Kocka vs. Gibson Products Company, 535 P.2d 681 (Utah 1975) .....	5,16,17, 18
Packaging Corporation of America vs. Morris, 561 P.2d 680 (Utah 1977) .....	5
Pellegrini vs. Sachs & Son, 522 P.2d 704 (Utah 1974) .....	5,16,17, 18
Perkins vs. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) .....	12
Southern Idaho Pipe & Steel vs. Cal-Cut Pipe, 98 Idaho 495, 567 P.2d 1246 (1977) .....	14, 15

## PUBLICATION CITED

Strachan, In Personam Jurisdiction in Utah, 1977 Utah Law Review, pages 255-257 .....	6,8,9
--	-------

## STATUTE CITED

Idaho Code, Section 5-514 .....	13, 14
---------------------------------	--------

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

BURT DRILLING, INC., a :  
Utah corporation, and :  
INTERMOUNTAIN POWER PROJECT, :  
a Utah corporation, :

Plaintiffs and :  
Appellants, :

vs. :

Case No. 15709

PORTADRILL, a Division of ::  
SMITH INTERNATIONAL, INC., :  
and PACIFIC HYDRO :  
CORPORATION, :

Defendants and :  
Respondents. :

---

BRIEF OF RESPONDENT

PACIFIC HYDRO CORPORATION

---

STATEMENT OF CASE

This is an action by Burt Drilling and Intermountain Power Project to recover damages for the alleged negligence and breach of warranty resulting from the sale of a portable drilling machine manufactured by Portadrill, a Division of Smith International, Inc., and sold by Pacific Hydro Corporation.

## DISPOSITION IN LOWER COURT

The Honorable J. Robert Bullock granted the motion of Pacific Hydro Corporation quashing the service of process and dismissing Pacific Hydro Corporation on the ground that the court did not have jurisdiction over that defendant.

## RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the order entered below.

## STATEMENT OF FACTS

Sometime prior to February 7, 1975, plaintiff, Burt Drilling, requested a written proposal from Pacific Hydro for the sale of a portadrill rotary drilling machine (R. 23). In response to this request, Pacific Hydro submitted from its San Francisco office a written proposal dated February 7, 1975 to Burt Drilling (R. 23, 36, 42). About February 28, 1975, Burt Drilling contacted Pacific Hydro at its San Francisco office and ordered the rotary drilling machine and instructed that the same was to be delivered F.O.B. Denver, Colorado, to the plaintiff, Burt Drilling (R. 23). The invoice and Security Agreement which evidenced the sale were signed on behalf of Pacific Hydro in San Francisco by its president (R. 47-50). The Security Agreement required that Burt Drilling make payments to Pacific Hydro at its San Francisco address (R. 49).



About March 4, 1975, Burt Drilling accepted delivery of the portable drilling machine from defendant, Portadrill, the manufacturer of the machine, in Denver and Pacific Hydro billed Burt Drilling from its San Francisco office by invoice accepted by K. O. Burt of Burt Drilling on or about March 1, 1975 (R. 23, 47).

Burt Drilling then drove the portable drilling machine to New Mexico where the machine was alleged to have failed three times between March 18 and June 10, 1975 (R. 36-37). In each instance, Burt Drilling alleges it notified defendant, Portadrill, the manufacturer, and said defendant undertook repairs (R. 36-37). Only defendant, Portadrill, was given formal notice of the claimed breach of warranty (R. 39).

About August 14, 1975, the portable drilling machine was moved by Burt Drilling to Wayne County, Utah, where it was alleged to have failed (R. 40). Pacific Hydro sent representatives to Utah on two occasions subsequent to the alleged machine breakdowns. In each instance, the employees were in Utah only to assist the plaintiff in determining what the problems were with respect to the drilling machine (R. 30-31).

Pacific Hydro had no personnel, agency, agent, resident representative, dealers, jobbers nor independent contractors located in the State of Utah representing it in

the sale of any of its products or merchandise. Further, Pacific Hydro has no telephone listings nor does it distribute any catalogs or other advertising to the public in the State of Utah and it has no real property, inventory nor bank accounts in this State (R. 23, 24). Plaintiffs admit that Pacific Hydro has no offices, bank accounts nor property in Utah (R. 27 and Appellants' Brief, page 10). Even in their complaint, plaintiffs allege that Pacific Hydro is a California corporation with its principal place of business in that State (R. 35).

It is important to observe that the defendant manufacturer, Portadrill, has answered plaintiffs' complaint and submitted itself to the jurisdiction of the court.

The trial court determined that "the contacts which defendant, Pacific Hydro Corporation, has with the State of Utah are not sufficient to satisfy the requirements of the Long-Arm Statute." (R. 15). Accordingly, an Order quashing the service of summons and dismissing the action as to Pacific Hydro was entered (R. 13 and 14).

## ARGUMENT

### POINT I

THE TRIAL COURT PROPERLY RULED THAT PACIFIC HYDRO DID NOT HAVE SUFFICIENT CONTACTS WITH THIS STATE FOR JURISDICTION TO BE MAINTAINED OVER IT.

371,203.3-0 90 L Ed 85  
66-11-11

The analyses that courts in this state are to use in determining whether a foreign corporation has sufficient contacts with Utah to permit jurisdiction have been clarified in Abbott G.M. Diesel, Inc. vs. Piper Aircraft Corp., 578 P.2d 850 (Utah 1978). This approach is based on United States Supreme Court opinions which have been cited in numerous opinions of this Court. See Abbott, supra; Kocka vs. Gibson Products Company, 535 P.2d 681 (Utah 1975); Packaging Corporation of America vs. Morris, 561 P.2d 680 (Utah 1977); and Pellegrini vs. Sachs & Son, 522 P.2d 704 (Utah 1974).

Jurisdiction over nonresident defendants was expanded to include foreign corporations with sufficient minimum contacts with the forum state in the landmark case of International Shoe Co. vs. Washington, 326 U.S. 310 (1945). In that case, the court explained that minimum standards of due process required an evaluation of the quality and nature of the defendant's acts within the forum state, the extent to which the defendant thereby enjoyed the protection of the forum's laws, and the relationship between the defendant's activities in the forum and the plaintiff's claim. At the same time, the court noted that limited or isolated activities were insufficient to meet the requirements of due process when the activities in the forum were unrelated to plaintiff's

claim.

The second case which has been repeatedly cited by this Court is Hanson vs. Denckla, 357 U.S. 235 (1958), wherein the Court clarified the minimum contacts required with this language:

"The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." International Shoe Co. vs. Washington, supra.

Thus, some purposeful act must be shown and considered in light of other elements involving "fair play and substantial justice" before jurisdiction can be maintained over a nonresident defendant. See Strachan, In Personam Jurisdiction in Utah, 1977 Utah Law Review, Pages 255-257. It is in the context of these United States Supreme Court cases that this Court set forth guidelines for analysis in Abbott, supra, as follows:

"...(a) the nature and quality of Piper's acts  
(b) whether Piper engaged in purposeful -- rather than unintentional -- acts in order to avail itself of the privileges and protections here (and the substance -- not just form -- of Piper's business relationship and acts should be ascertained), and (c) any other relevant

matters bearing on 'notions of fair play and substantial justice'."

In Abbott, the defendant corporation involved in the appeal was the manufacturer of the airplane in question. While defendant, Piper, denied any business activities in Utah, the affidavits filed on behalf of the plaintiffs alleged Piper initiated the flight training program through five distributors in Utah, had a contractual arrangement with another corporation whereby Piper's products were sold in Utah and which would result in a forfeiture of certain personal property to Piper whenever the contract arrangement was terminated, had employees in Utah from time to time to inspect dealers' facilities, regularly distributed notices through the mail pertaining to its products as sold to registered Piper owners, solicited business through nationally circulated magazines, and employed sales representatives who visited Utah to promote sales every five or six weeks. In spite of these contacts and the allegations of breach of warranty, the case was remanded for a determination of whether there were sufficient contacts to maintain jurisdiction in light of the guidelines cited above.

Ths distinctions between Abbott and the present case are obvious. In Abbott, the manufacturer was promoting sales

of its products through advertising and local distributors over which it apparently exercised some control. Here, the California distributor did no advertising and had no agents or distributors in this State. To extend jurisdiction in this case would be a substantial expansion of this Court's holding in Abbott, and an injustice to this respondent.

Plaintiffs claim five separate contacts with this State are sufficient to establish jurisdiction of the Utah Courts. These claimed contacts warrant individual analysis in light of the standards stated in Abbott and demonstrate how untenable the plaintiffs' claim is.

1. It is a misnomer to say that Pacific Hydro solicited by mail the purchase of the portable drilling machine. The February 7th proposal mailed by Pacific Hydro was not a mass mailing nor advertising, but a specific response to a request from plaintiff, Burt Drilling. The affidavit of James E. Beal, the President of Pacific Hydro, is un rebutted on this point (R. 22-24). The fact that the plaintiffs and not Pacific Hydro initiated the transaction at issue should weigh heavily in evaluating the nature and quality of the defendant's act. In Professor Strachan's article, she presents this analysis:

"Another factor which should be considered in assessing the quality of the defendant's contact with the forum is whether the plaintiff or the defendant initiated or solicited the transaction at issue. For example, Utah probably should not assert personal jurisdiction over a defaulting California purchaser whose only contact with Utah was to purchase goods from a Utah plaintiff either in response to the plaintiff's mail order solicitation or through the solicitation of plaintiff's local California salesman. Although the nonresident's contact with Utah could satisfy the purposeful act requirement, the mere fact that a nonresident knowingly deals with a Utah resident is probably not a contact of sufficient quality to support personal jurisdiction in Utah. Courts and commentators have struggled to verbalize a due process distinction based upon solicitation or initiation. In essence, the question is when is it fair and reasonable to require that one who goes into a foreign state to solicit business with a resident thereof must return there to litigate claims arising out of that solicitation." (pp. 257-258.) (Emphasis added.)

The example given is appropriate. A Utah company which solicits a sale from a California corporation and accepts delivery in Colorado for use of the product in New Mexico should not be permitted to require the California corporation to defend an action in Utah.

2. Burt Drilling was obviously doing business in states other than Utah. The fact that the sale was to a company with headquarters in Utah is a quantitative factor which has nothing to do with the substance of the transaction. Looking

to the significant elements of the party's dealings, the sale called for delivery in Colorado and immediate relocation of the unit to New Mexico. It is the defendant's acts and not the residence of the plaintiff which should be evaluated in this appeal.

3. The Security Agreement (Conditional Sales Contract) used by the parties in this case does not represent a purposeful attempt to take advantage of the Utah laws. The only reason for the clause in the Agreement requiring the collateral to be located in Utah is to contractually force the debtor to inform the creditor if the property is to be moved (See these specific provisions of the Security Agreement R. 49-50). Burt Drilling admits that all parties to this action were aware that the drilling machine was to be used in New Mexico. In fact, it was a fortuitous situation that brought the unit to Utah. If Burt Drilling had not lost its contract in New Mexico, the unit would have remained there.

The appellants cite no Utah law which Pacific Hydro was using to its advantage. The sales contract by its terms defined the relationship of the parties. The simple fact that a Security Agreement was signed is of no consequence, since such arrangements are recognized in all fifty states. The



only reason for specifying that the unit was to be located in Utah was to place the burden, by contract, on the debtor to advise Pacific Hydro of the unit's location. The place of business for Burt Drilling was used because it is a Utah corporation with place of business in Utah.

4 and 5. The fact that a representative of Pacific Hydro was in Utah on two occasions to discuss the plaintiffs' situation should not be the basis for determining the Utah courts have jurisdiction here. These attempts to assist the plaintiff were simply an extension of the fortuity which found the unit in Wayne County, Utah. It would be curious to have this appeal turn on the fact that Pacific Hydro made these two visits to Utah when it could have simply required the plaintiffs to bring the unit to California to be inspected. To have the jurisdictional question turn on these two visits would chill any intention of foreign corporations to respond to a Utah resident's complaints for items which found their way to this State. These two visits were after the fact and had no relation to the transaction.

The plaintiffs' First Cause of Action clearly arises solely from activities outside the State of Utah. The contract was executed in California, the payments were made in that

State, the unit was delivered in Colorado at the manufacturer's plant, the unit was immediately moved to New Mexico where it is claimed to have failed, and where repairs were undertaken by the manufacturer. In such cases, due process requires that a foreign corporation have extensive activity within the state before jurisdiction may be extended to it. See Abbott, supra, Footnote 6, and Perkins vs. Benguet Consolidated Mining Co., 342 U.S. 437 (1952). In fact, in such cases the Long-Arm Statute should not apply if the claim does not arise from activity within this State.

Even considering the issues raised in plaintiffs' Second Cause of Action, the contacts with this State are insufficient as a matter of law to justify the extension of jurisdiction. Pacific Hydro's claimed contacts with this State were initiated by Burt Drilling soliciting a proposal. Thereafter, an unforeseeable chain of events brought the drilling unit to Utah. This is not the type of conduct which can be characterized as a purposeful attempt to take advantage of the protection of Utah laws. Fair play and substantial justice do not require Pacific Hydro to defend an action outside of the exclusive sales area and where it has no representatives, when Burt Drilling is admittedly a multi-state

operation and where witnesses from at least four states will be required to testify.

The Idaho cases cited by plaintiffs are not authority here. In Intermountain Bus. Forms, Inc. vs. Shepard Bus. F. Co., 96 Idaho 538, 531 P.2d 1183 (1975), the plaintiffs submitted the affidavit of a former salesman for the defendant which stated that in the past, he had been employed by the defendant and had been required to reside in Idaho, the defendant had telephone listings in Idaho, the president of the defendant company had made numerous trips to Idaho on company business, and the defendant had solicited business from printing plants, office supply firms and printing salesmen for the past fifteen years. The defendant company then accepted an order which was an exact repeat of specifications of the previous order it had made in that state and mailed the order to an Idaho company.

It is understandable that the Idaho Supreme Court would extend jurisdiction to a defendant in these circumstances, especially in light of the broad language of the Idaho Long-Arm Statute which provides in part:

""(a) The transaction of any business within this state which is hereby defined as the doing of any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business

purpose or objective of any part thereof of such person, firm, company, association or corporation.'" Idaho Code, Section 5-514.

The second Idaho case cited by the plaintiffs, Southern Idaho Pipe & Steel vs. Cal-Cut Pipe, 98 Idaho 495, 567 P.2d 1246 (1977), supports Pacific Hydro's position in this case. In that case, a California company mailed publications to Idaho companies advertising that it wished to sell products in Idaho on terms which would be negotiated with the individual Idaho companies. The plaintiff responded to the advertisement and after several telephone negotiating sessions, the defendant foreign corporation made a formal offer which was accepted by the Idaho plaintiff.

After referring to the leading United States Supreme Court opinions, the Idaho court concluded that the advertising and solicitation by the foreign corporation were the basis for extending jurisdiction. The Court explained its holding as follows:

"We believe that Cal-Cut's initiation of business activity in Idaho is crucial to the resolution of the constitutional question. Unilateral activity usually will not be sufficient to establish the 'minimal contacts' with the forum state envisioned by International Shoe, but when a nonresident defendant initiates contact with residents of the forum state and those contacts proceed, we think that the constitutional standard of International Shoe

is satisfied. Cal-Cut has transacted business in Idaho for several years, business that was initiated directly by Cal-Cut, its customers receiving personalized invitations to purchase its wares. Under such circumstances, Cal-Cut cannot deny that it has a sufficient nexus with the state to allow the state's citizens an effective means of legal redress."

The crucial distinction between the case before the Court and Cal-Cut Pipe is that in the instant case, the contacts with Utah were initiated by the Utah company. Further, Pacific Hydro did not deliver its product to Utah but to the State of Colorado for use in New Mexico.

## POINT II

PACIFIC HYDRO WAS NOT "TRANSACTIONING BUSINESS" IN UTAH AS DEFINED BY STATUTORY AND CASE LAW.

Plaintiffs attempt to maintain jurisdiction over Pacific Hydro by application of the Long-Arm Statute and cases interpreting and applying it. As noted above, the Long-Arm Statute is not applicable to this case because the plaintiffs' claim does not arise from activities of Pacific Hydro in this State. Even if the statute is applied, the valid distinctions drawn in earlier cases and factors weighed in the above cases should still be considered part of any court's application of the guidelines outlined in Abbott, supra.

In Hill vs. Zale, 25 Utah 2d 357, 402 P.2d 332 (1971),

this Court listed several factors which are relevant in determining whether a company is doing business in Utah. Those factors should still be considered, and the extent to which asserted claims arise from activities within the State of Utah, and whether the activities of the foreign defendant are transitory or continuous will now have even more significance.

Pellegrini, supra, reasons that the sale of a product in another state which may be brought into Utah should not be the basis for requiring the retailer to defend an action in this State. Plaintiffs would have this case extended to cover the facts now before the Court on the ground that the sale was to a corporation with headquarters in Utah. While this reasoning may be appealing in an action against a manufacturer, it is appropriately deemed "not overly important" in an action against a retailer. This is especially true where the Utah resident solicits the sale of the product for use in another state. As in Pellegrini, supra, Hydro Pacific, the retailer, did not go into Utah and approach plaintiffs regarding sales or even advertise in this State. The expectation at the time of the sale was that the unit would be used in states other than Utah.

In Kocka, supra, the manufacturer who had its product

allegedly cause harm in this State was held not to be subject to jurisdiction under the Long-Arm Statute where there was no causal connection between the injury and any act of the manufacturer other than the sale to another nonresident company.

The issue of convenience is addressed in both Hill and Pellegrini. While it is a factor, the observation that it is always a two-sided question is significant. The convenience question favors Pacific Hydro here. Utah is outside its expressly limited sales area and the claimed contacts with this State are tenuous (R. 22, 23 and 24). The burden of litigating the action in Utah involving a California contract, a purchaser who personally accepts delivery of a product at the plant of a Colorado manufacturer, and claimed failures of the product in the State of New Mexico are obvious. Witnesses for the case will be called from New Mexico, Utah, California and Colorado and the liability question will probably involve more witnesses from states outside Utah than from Utah. Burt Drilling admits that it does business in several states and it can more easily bring the action in a state where the defendants do business as well.

The factors listed in Hill, supra, are not present in this case. There is no property, bank accounts, personnel,

advertising of any kind, nor agents of any kind in this State. As noted in Pellegrini and Kocka, supra, the fact that a product ultimately finds its way to this state and allegedly causes harm should not be the basis for establishing jurisdiction, but the nature of the foreign defendant's contacts with this State should be determinative. The contacts in the case before the Court are not only insignificant, but centered in other states. The inconvenience and burden for Pacific Hydro when combined with the fact that the plaintiffs initiated and solicited the transaction in question makes this a clear case where a corporation is not "transacting business" in Utah as those terms are used in the Long-Arm Statute. Pacific Hydro's contacts in Utah represent an "isolated" transaction and extending jurisdiction here will have a chilling affect on the willingness of foreign corporations to respond to complaints of Utah residents for products which might find their way to this State.

There was no necessity for the lower court to make findings of fact. In our instant case, there is no dispute as to the facts or jurisdiction. The affidavit of K. O. Burt (R. 30-31) does not set forth facts based on personal knowledge, but unsupported conclusions. If plaintiffs had any facts showing Pacific Hydro did business in Utah, those facts would



have undoubtedly been listed by plaintiffs. There was no genuine issue as to any material fact and respondent was entitled to a judgment of dismissal as a matter of law.

#### CONCLUSION

This is not the appropriate case to expand jurisdiction beyond the facts and the express holding of Abbott. Pacific Hydro's contacts with Utah are incidental and more related to chance than to any deliberate attempt to take advantage of the protection of the Utah laws.

The plaintiffs' claim does not arise from activities in Utah and circumstances merely combined to ultimately bring the portable drilling machine to Utah. Pacific Hydro simply filled the order of plaintiffs and invoiced plaintiffs for a machine which the plaintiffs accepted in Colorado for the acknowledged intended use in New Mexico. Pacific Hydro should not be obliged to answer the claims of the plaintiffs in Utah just because they are residents in Utah and it might be more convenient for them to litigate here. The defendant manufacturer, Portadrill, has submitted itself to the jurisdiction of the court and plaintiffs' remedy should be directed to the manufacturer.

The order of the trial court, entered after extensive oral arguments, should be affirmed.

Respectfully Submitted,

BAYLE AND LAUCHNOR

  
F. Robert Bayle

Attorneys for Defendant  
and Respondent  
Pacific Hydro Corporation

I hereby certify that three (3) copies of the foregoing Brief of Respondent, Pacific Hydro Corporation, was mailed, postage prepaid, to Don R. Petersen, Esq. of Howard, Lewis & Petersen, Attorneys for Appellants, 120 East 300 North Street, Provo, Utah 84601 this 3rd day of July, 1978.

  
F. Robert Bayle